

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID E. HILL,

Plaintiff,

v.

HARLEY LAPPIN, et al,

Defendants.

No. 3:11-CV-01609

(Senior Judge Rambo)

(Magistrate Judge Carlson)

ORDER

APRIL 2, 2019

David E. Hill, a federal inmate, has filed this *Bivens*¹ action alleging that numerous defendants violated his rights by placing him in four-point restraints for approximately 43 hours. (Doc. 1). District Judge Richard P. Conaboy previously granted in part Defendants' motion for summary judgment, but denied that motion as to Defendants B. Bledsoe, Lt. J. Hepner, Lt. M. Saylor, Lt. M. Edinger, and Lt. P. Carrasquilla (collectively "Remaining Defendants") after concluding that genuine issues of material fact existed as to whether Remaining Defendants' actions were justified by a legitimate penological interest. (Docs. 124, 125). Judge Conaboy subsequently denied Remaining Defendants' motion for reconsideration. (Doc.

¹ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

135). Hill has now filed his own motion for summary judgment, which Remaining Defendants seek to have stricken. (Docs. 138, 141).

On January 22, 2019, Magistrate Judge Martin C. Carlson issued a Report and Recommendation recommending that this Court deny both pending motions. (Doc. 151). As to Hill's motion, Magistrate Judge Carlson concludes—based partly on the law of the case doctrine—that a genuine issue of material fact precludes summary judgment. Because Magistrate Judge Carlson recommends denying summary judgment, he further recommends denying as moot Remaining Defendants' motion to strike. No timely objections were filed.

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error. Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72.31. The Court has reviewed the record and finds no clear error. Consequently, it is hereby ordered that:

1. Magistrate Judge Martin C. Carlson's Report and Recommendation (Doc. 151) is hereby ADOPTED in its entirety;

2. Hill's motion for summary judgment (Doc. 138) is DENIED; and
3. Remaining Defendants' motion to strike (Doc. 141) is DENIED as moot.
4. A separate case management order setting trial dates and scheduling deadlines shall issue.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: April 2, 2019